No. 187

In the Supreme Court of the United States

OCTOBER TERM, 1945

CHERRY COTTON MILLS, INC., PETITIONER

v.

THE UNITED STATES

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

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OPINION BELOW

The opinion of the Court of Claims (R. 15–18) is reported in 59 F. Supp. 122.

JURISDICTION

The judgment of the Court of Claims was entered on April 2, 1945 (R. 20–21). The petition for a writ of certiorari was filed on July 2, 1945, and was granted October 15, 1945 (R. 21). The jurisdiction of this Court rests upon Section 3 (b) of the Act of February 13, 1925, as amended.

QUESTION PRESENTED

Whether, in a suit brought by petitioner against the United States in the Court of Claims to recover a tax refund, the Court has jurisdiction, under Section 145 (2) of the Judicial Code, to hear and determine a counterclaim based upon petitioner's indebtedness to the Reconstruction Finance Corporation.

STATUTES INVOLVED

The pertinent parts of the statutes involved are set forth in the Appendix A, *infra*, pp. 40–46.

STATEMENT

In 1936, the Reconstruction Finance Corporation (hereinafter referred to as R. F. C.) participated with an Alabama national bank in a loan of $110,000 to petitioner, an Alabama corporation, the loan being evidenced by petitioner's note and secured by a mortgage on its property (R. 10–12).[1] Petitioner defaulted in repaying

[1] Petitioner had applied for the loan in October 1935, and the bank agreed to lend up to $110,000 on petitioner's note secured by collateral, with the understanding that the R. F. C. would be asked to purchase a participation therein (R. 10). The note for $110,000 with interest, and the mortgage which secured it, were executed by petitioner to the bank in January 1936 (R. 10). In February 1936, the R. F. C. entered into a participation Agreement with the bank, at the latter's request, whereby the R. F. C. acquired a two-thirds interest in the note, leaving a one-third interest in the bank (R. 11). After the bank transferred the note and mortgage to the R. F. C. "for values received," the latter executed a

the loan, the mortgage was duly foreclosed on July 12, 1939, and the R. F. C. and the bank were left with a deficiency claim against petitioner amounting to $5,963.51 due to the R. F. C. and $2,981.74 due to the bank (R. 12–13).[2]

In February 1942, the Commissioner of Internal Revenue allowed in the amount of $3,104.87, a claim filed by petitioner for a refund of processing and floor stock taxes paid by it under the Agricultural Adjustment Act (R. 13). Petitioner was advised by the Acting Commissioner that unless it was indebted to the United States Government, a check for such refund would issue to it (R. 13). On August 11, 1942, the General Accounting Office issued a Certificate of Settlement certifying that $3,104.87 was due to petitioner from the United States "on account of refund of processing and floor stock taxes," and directing that a check in this amount "issue in favor of" the R. F. C. "to partially liquidate an in-

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Certificate of Interest reciting their respective interests in the loan (R. 11–12). The bank advanced the $110,000 to petitioner in installments ending in August 1936 (R. 12).

[2] On default by petitioner, the R. F. C. instituted foreclosure proceedings in the joint names of itself and the bank on July 12, 1939, when a total of $108,194.06 was due on the note (R. 12). The R. F. C. and the bank jointly purchased the property at the foreclosure sale for $100,000, leaving a total deficiency (including expenses of sale) of $8,945.25, of which ⅔ or $5,963.51 was due to the R. F. C. (R. 12–13). The Court of Claims found that "since July 12, 1939," petitioner "has been indebted to the R. F. C." in this amount "plus interest at 5 percent per annum" from that date (R. 13). Contrary to petitioner's statement (Pet. Br. 16), the R. F. C. did not obtain a deficiency judgment for this amount.

debtedness" of petitioner to the R. F. C. "in the amount of $5,963.51 plus interest of 5% from July 12, 1939" (R. 1–2, 13–14).

Apparently in ignorance of the directions in this Certificate of Settlement, the Treasurer of the United States on or about August 17, 1942, issued a check payable to petitioner in the amount of the tax refund (R. 13). However, on August 26, 1942, that check was stopped and recalled from petitioner by a telegram from the Chief Disbursing Officer of the Treasury Department, informing petitioner that the check should have been drawn to the R. F. C. to liquidate partially petitioner's indebtedness to the R. F. C. (R. 13). Petitioner returned that check to the Treasury Department, and a reissued check in the same amount was drawn to the order of the R. F. C. and was transmitted to it by the Treasurer of the United States in accordance with the instructions in the Certificate of Settlement (R. 13–14). On September 2, 1942, the R. F. C. allowed petitioner a credit or deduction in the amount of the check, on petitioner's indebtedness to the R. F. C. (R. 14).

On June 12, 1943, petitioner instituted this suit in the Court of Claims to recover the tax refund "without credit or set-off" on account of its indebtedness to the R. F. C. (R. 1–3). The Government filed an answer denying indebtedness to petitioner (R. 3–4), and a counterclaim for the

amount remaining due to the R. F. C. after applying the tax refund check (R. 4–8). After finding the facts as set forth above (R. 9–14), the Court of Claims dismissed petitioner's suit and rendered judgment in favor of the United States on the counterclaim,[3] in a stipulated amount of $4,165.73 (R. 19, 20–21).[4]

SUMMARY OF ARGUMENT

I

The debt due from petitioner to the R. F. C. is a demand on the part of the United States within the meaning of Section 145 (2) of the Judicial Code, 28 U. S. C. 250 (2), because that corporation is an agency of the United States. R. F. C. is wholly owned by the Government, its functions are governmental, and the Government guarantees the corporation's obligations.

Section 145 (2) contains the sweeping language "all * * * demands whatsoever", and is amply broad to cover all claims of the United

[3] In both its petition for certiorari and its brief herein, petitioner incorrectly states that the court below gave judgment in favor of the R. F. C. (Pet. 2, 4, 8; Pet. Br. 8, 28).

[4] This total comprises the balance of $2,858.64 due to the R. F. C. from petitioner after applying the tax refund check; plus $937.82 representing interest at 5% on the original deficiency of $5,963.51 from its due date (July 12, 1939) to the date on which the tax refund was applied in reduction (September 2, 1942); plus $369.27 representing interest at 5% on the reduced deficiency from September 2, 1942 to the date of judgment (R. 19).

States whether they originate in corporate or noncorporate agencies. The legislative history of the section strongly supports the construction placed upon it by the court below.

II

The power enjoyed by the R. F. C. to carry on litigation in its own name does not deprive it of its status as an agency of the United States, and it does not deprive the United States of its right to sue in its own name on the claims of its corporate agencies. The courts have uniformly held that the United States may sue in its own name on the claims of its corporate agencies where its interests are involved, despite the fact that the corporations are authorized to carry on litigation in their own names. A detailed examination of the structure and functions of the R. F. C. reveals no justification for abridging this right and power of the United States or for denying the jurisdiction of the court below over the counterclaim here in issue.

III

There is nothing in the Budget and Accounting Act of 1921 to prohibit the Comptroller General from setting off an audited claim of the R. F. C. against petitioner's tax refund claim. It is the duty of Government accounting officers, without regard to statutes, to protect the interests of the United States by withholding payments when they

have actual knowledge that the claimant owes the United States on another transaction.

Moreover, the jurisdiction of the Court of Claims over Government set-offs and counterclaims is independent of Government accounting statutes. And it would have been the duty of the Court of Claims to take cognizance of petitioner's indebtedness to the R. F. C. where that indebtedness, as here, was revealed by petitioner's complaint, regardless of whether the Government attorneys had actually set up the counterclaim in the Government's pleadings.

ARGUMENT

Petitioner was engaged in two separate transactions with agencies of the United States at approximately the same time. One transaction, an overpayment of taxes to the Bureau of Internal Revenue, a noncorporate agency, resulted in a conceded indebtedness of about $3,000 from the United States to petitioner. The other transaction, a loan obtained in part from the R. F. C., a corporate agency wholly owned by the United States, resulted in an uncontroverted indebtedness of about $7,000 (including interest) from petitioner to the R. F. C. and ultimately to the United States. Petitioner contends that it is entitled to recover a judgment in the Court of Claims against the United States for the $3,000, but that the United States may not, in the same suit, set off the $3,000 debt against its $7,000 claim and recover

a judgment for the remaining $4,000. In effect, the petitioner claims that it is entitled, in this suit, to collect $3,000 from the United States, but that the United States must resort to a separate suit in another tribunal in order to collect its $7,000 claim, and thus run the attendant risk that the $3,000 will have been dissipated and the separate judgment for $7,000 rendered wholly uncollectible. In short, petitioner takes the startling position that the United States must now hand over to it the $3,000, despite the obvious fact that heretofore the United States has been unable to collect from petitioner its uncontroverted $7,000 claim. According to petitioner, the jurisdiction of the Court of Claims, under Section 145 (2) of the Judicial Code, to hear and determine "all set-offs, counterclaims * * *, or other demands whatsoever on the part of the Government of the United States against any claimant against the Government in said court," is prevented from operating because the obligation to the United States arose out of a transaction with a corporate agency capable of suing in its own name.

We submit that this contention was rightly rejected below; and that the Congressional desire expressed more than 80 years ago in the counterclaim statute, to avoid multiplicity of suits and to "facilitate the administration of justice" between the Government and its citizens, was not intended

to be rendered ineffective whenever the Government utilized a corporate agency to carry out its functions.

I

Petitioner's Debt to the R. F. C. Is a Demand on the Part of the Government of the United States.

Section 145 (2) of the Judicial Code, 28 U. S. C. 250 (2), provides, *inter alia*:

> The Court of Claims shall have jurisdiction to hear and determine the following matters:
>
> * * * * *
>
> Second. All set-offs, counterclaims, claims for damages, whether liquidated or unliquidated, or other demands whatsoever on the part of the Government of the United States against any claimant against the Government in said court: * * *

If petitioner's indebtedness to the R. F. C. falls within the category of "demands * * * on the part of the Government of the United States," as this phrase is used in Section 145 (2) of the Judicial Code, the Court of Claims plainly acted within its jurisdiction in adjudicating the counterclaim. We shall show that the action of the court below in holding the R. F. C. claim to be within the purview of the section, is fully justified by both the broad language of the section and the

Congressional objective reflected in the history of its enactment.

THE COUNTERCLAIM PROVISION IS SUFFICIENTLY BROAD TO INCLUDE CLAIMS OF CORPORATIONS WHOLLY OWNED BY THE UNITED STATES

The counterclaim provision gives the Court of Claims jurisdiction over "*all* set-offs, counterclaims, claims for damages * * * or other demands *whatsoever* on the part of the Government of the United States against any claimant against the Government in said court." [Italics supplied.] Petitioner's contention is that this means not *all* counterclaims or demands *whatsoever*, but only those originating in transactions with noncorporate agencies of the Government. "Across the petitioner's path there * * * lies the stumbling block of that uncompromising 'all'." See *Baltimore National Bank* v. *Tax Commission*, 297 U. S. 209, 215. And here that obstacle is made even more difficult to hurdle by the addition of "whatsoever." In fact, the counterclaim provision has been characterized by this Court as "* * * broad enough to authorize the Court of Claims, in suits against the United States, to hear and determine demands of the government of every kind against the claimant, or those whom the claimant represents * * *." *Allen* v. *United States*, 17 Wall. 207, 210. In the cited case, the demand in question did not even relate to a corporate agency of the Government handling funds actually owned

by the Government, but had to do with securities held in trust for Indians; yet the statute was held applicable.

The scope of the counterclaim provision must be considered in the light of the truism that the Government of the United States functions solely through its agents and agencies. Hence, claims against it or in its favor can arise only through their functioning. The R. F. C. is a Government agency (*R. F. C.* v. *Menihan Corp.*, 312 U. S. 81, 83) none the less because it was created by Congress in corporate form to facilitate the achievement of its purposes. Cf. *Inland Waterways Corp.* v. *Young*, 309 U. S. 517, 523. Petitioner's statement that the R. F. C., in the transaction here involved, was "acting in its own name and right as any private corporation" (Pet. Br. 17) is disproved by the well-established proposition that every activity of a government-owned corporation like the R. F. C. is necessarily governmental and not private. *Federal Land Bank* v. *Bismarck Co.*, 314 U. S. 95, 102; *Pittman* v. *Home Owners' Loan Corp.*, 308 U. S. 21, 32; *Graves* v. *N. Y. ex rel. O'Keefe*, 306 U. S. 466, 477.[5] The fallacy in

[5] A clear distinction exists between corporate agencies, such at the R. F. C., owned and controlled by the United States and engaged in the performance of governmental functions, and instrumentalities such as national banks, in which there are private interests and purposes. The latter are "* * * not departments of the Government. They are private corporations in which the Government has an interest." *Emergency Fleet Corp.* v. *Western Union*, 275 U. S. 415, 425–426; *Inland Waterways Corp.* v. *Young*, 309 U. S. 517, 522.

petitioner's argument is further emphasized by the fact that the obligations of the R. F. C. are fully and unconditionally guaranteed by its sole stockholder, the United States (R. F. C. Act, Sec. 9, as amended; 15 U. S. C. 609), a feature that marks graphically the fundamental difference between the relationship of the Government to the R. F. C. and the relationship of a stockholder to a private corporation. Moreover, as will be shown herein (*infra*, pp. 17–23), the demands of or against a Government-owned corporation may be litigated by or against the United States. And clearly the phrase "Government of the United States," as used in the counterclaim statute, is interchangeable with the phrase "United States". This appears from the fact that "claims against the United States," upon which suit may be brought in the Court of Claims, includes "all claims * * * upon any contract * * * with the Government of the United States" (28 U. S. C. 250 (1)). It also appears from the fact that the counterclaim provision itself, covering demands "on the part of the *Government* of the United States," identifies the plaintiff in the suit as "any claimant against the Government in said court" (28 U. S. C. 250 (2)).

There is plainly no room in the statute for a distinction between corporate and noncorporate agencies owned by the Government.

THE LEGISLATIVE HISTORY OF THE COUNTERCLAIM SECTION SUPPORTS THE CONSTRUCTION PLACED ON THAT SECTION BY THE COURT BELOW

Nothing in the history of Section 145 (2) of the Judicial Code reveals an intention on the part of the Congress to limit its applicability to demands arising from the functions of those agencies in existence at the date of its enactment. Nor does that history show a Congressional purpose to exclude from the purview of the section such new governmental devices, including Government corporations, as might be evoked by changing needs. Rather, the objectives of the statute require its application to any agency of the United States, to the extent that a demand in its favor arose in the course of its functioning as a Federal agency.

The counterclaim statute originated, almost in *haec verba*, in the Act of March 3, 1863, which imparted to the judgments of the Court of Claims the finality that had been withheld in the original Court of Claims Act of February 24, 1855 (c. 122, 10 Stat. 612), thus converting it from an "administrative or advisory body" into a court. *Williams* v. *United States*, 289 U. S. 553, 565; see also *United States* v. *Jones*, 119 U. S. 477, 477–479. In Section 3 of the 1863 Act, Congress also granted the Court of Claims jurisdiction over "all set-offs, counter-claims, claims for damages,

whether liquidated or unliquidated, or other demands whatsoever, on the part of the Government against any person making claim against the Government in said court * * * (c. 92, 12 Stat. 765.)[6]

Reporting the bill[7] which become the Act of March 3, 1863, the House Judiciary Committee stated that the set-off and counterclaim provision was "founded upon the policy of avoiding multiplicity of suits, and furnishing an additional safeguard against fraudulent or exorbitant demands against the government in cases where the claims are mutual." (H. Rept. 34, 37th Cong., 2d Sess., p. 3.) The counterclaim provision was attacked upon the floor of the House on the ground that a claimant thereby lost privileges which he might invoke if the United States brought an independent suit against him, such as the right to a jury trial (58 Cong. Globe 1674). But its sponsors, strongly defending that provision as the "beauty of the bill", replied that if a citizen "prefers his claim" against the United States under the jurisdiction conferred by bill,

> It is a matter of his own election. The bill does not compel him to do so; he need not do it. If there be counter-claims between

[6] The portion of the section here in issue was cast in its present form by Rev. Stat. § 1059 which added the phrase "of the United States" after the phrase "on the part of the Government." There is no evidence that any change of substance was intended by such addition.

[7] H. R. 226, 37th Cong., 2d Sess.

> him and the Government he may bide his time and allow the Government of the United States to sue him in the proper tribunal; in which case, * * * he may be entitled to a trial by jury, and he may prefer his set-off." (58 Cong. Globe 1674.)

Observing that it was "as much the duty of the citizen to pay the Government as it is the duty of the Government to pay the citizen" (58 Cong. Globe 1674), the sponsors of the measure urged that, where an individual claimant was indebted to the Government, the Court of Claims should be able to "adjudicate the case fully, * * * ascertain and determine a set-off, and then, if the balance * * * be determined against the individual, * * * the Government may proceed to collect it" (58 Cong. Globe 1675). The legislative materials leave little doubt that the set-off and counterclaim provision was deemed an essential and important aspect of the "bill to facilitate the administration of justice between the Government of the United States and its citizens" (58 Cong. Globe 1674).

It is clear that petitioner's contention, if sustained, would thwart the avowed purposes of the Congress in enacting the counterclaim provision, (1) to avoid a multiplicity of suits, and (2) to facilitate justice *between* the United States and its citizens. These purposes, which are fully demonstrated by the history of the provision, were, we submit, properly given effect by the decision below.

The court below noted the practical futility, and the inequity, of the rule for which petitioner here contends, in the following words (R. 16):

> We think that the plaintiff should not, in these circumstances, have a judgment against the Government. The effect of the payment of such a judgment would be to cancel the credit which the R. F. C. has given the plaintiff upon its debt to it, and restore the plaintiff's debt to the R. F. C. to its former amount, $5,963.51. The plaintiff's net worth would be exactly the same as it is now, and, since its debt to the R. F. C. is long past due, it would be, as it has long since been, under a duty to pay the R. F. C. not only the $3,104.87 which it would recover from the Government, but enough more to discharge its debt in full to the R. F. C. If it did its duty in this regard, the $3,104.87 would then be, in effect, where it is now, i. e., among the assets of the United States. So our exercise of our functions would have been a sheer waste of the time and energy of ourselves and of those who have participated in this litigation on the part of the plaintiff and the Government. Only by assuming that the plaintiff will take the judgment money and will not pay its debt to the Government could we say that a judgment for the plaintiff had accomplished anything other than circumlocution, and, on this assumption, our accomplishment would seem to have been less than worthy of our effort.

The practical view taken by the court below in carrying out the Congressional intention is clearly

within the rationale of the statement of this Court in *Barry* v. *United States*, 229 U. S. 47, 53, that "It would be folly to require the Government to pay under the one contract what it must eventually recover for a breach of the other." Hence, the legislative purpose of avoiding a multiplicity of suits is met. But the issue here is deeper than the procedural question of one suit versus two suits. Thus, if the decision below were to be reversed, and a separate proceeding required, the Government would be subjected to the risk that the moneys collected from it by the debtor might be dissipated and the corporation's separate judgment rendered wholly uncollectible,[8] the ultimate loss falling upon the public treasury.[9] This would obstruct the intention of the Congress underlying the counterclaim statute, to facilitate justice between the Government and its citizens.

II

The Sue-and-Be-Sued Powers of the R. F. C. Do Not Render the Counterclaim Statute Inapplicable Here

Petitioner's contention that Section 145 (2) of the Judicial Code is not applicable here, is based

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[8] As noted by the lower court, this would be "* * * a subjection of the sovereign's finances to risks and inconveniences to which no private person is by law subjected" (R. 17).

[9] Note that debts are reported to the General Accounting Office by R. F. C. when found to be otherwise uncollectible. See Appendix B, *infra*, p. 50.

in part upon the fact that R. F. C. may "sue and be sued" in its own name. From this fact petitioner argues that the R. F. C. is a separate and distinct legal entity like any private corporation, and is not, therefore, a part of the Government of the United States (Pet. Br. 15–28). We submit that this attribute of the Government corporation does not make its claims any the less "demands * * * on the part of the Government of the United States," within the meaning of the counter-claim provision.

A. Congress has provided that the R. F. C. "shall have power * * * to sue and be sued, to complain and to defend, in any court of competent jurisdiction, State or Federal." (R. F. C. Act, Sec. 4, 15 U. S. C. 604.) This constitutes a waiver by Congress of the Government's sovereign immunity, which it could have bestowed upon its corporate agencies. *Keifer & Keifer* v. *R. F. C.*, 306 U. S. 381, 389; cf. *Sloan Shipyards* v. *U. S. Fleet Corp.* (Nos. 308 and 376), 258 U. S. 549. The sue and be sued power also subjects the Government corporation to certain incidents of litigation such as liability for costs if its suit is unsuccessful (*R. F. C.* v. *Menihan Corp.*, 312 U. S. 81), and liability to garnishment proceedings (*Federal Housing Administration* v. *Burr*, 309 U. S. 242).

But neither the suability of the Government corporation nor its power to sue deprives that

entity of its status as an agency of the United States (*R. F. C.* v. *Menihan Corp.*, 312 U. S. 81, 83), or abridge, in any degree the substantial rights of the United States. Those rights are fully alive in respect of property and transactions of the corporation, such as immunity from State taxation (*Clallam County* v. *United States*, 263 U. S. 341; see R. F. C. Act, Sec. 10); the right to priority in insolvency proceedings (cf. *United States* v. *Emory*, 314 U. S. 423, 430); the privilege of receiving a pledge of assets from a national bank to secure deposits of the corporation's funds (*Inland Waterways Corp.* v. *Young*, 309 U. S. 517), and other incidents of sovereignty.[19] *Emergency Fleet Corp.* v. *Western Union*, 275 U. S. 415 (reduced rates); cf. *United States Grain Corp.* v. *Phillips*, 261 U. S. 106; *Defense Supplies Corp.* v. *United States Lines Co.*, 148 F. 2d 311 (C. C. A. 2) certiorari denied, October 8, 1945.

Because of the relationship between a Government-owned corporation and the United States, the courts have uniformly held that in addition

[19] In *Sloan Shipyards* v. *U. S. Fleet Corp.* (No. 526), 258 U. S. 549, the Fleet Corporation was denied a priority in bankruptcy which it had claimed "as an instrumentality of the Government of the United States" (258 U. S. at p. 570). The apparent significance of this portion of the *Sloan Shipyards* decision is removed by *Davis* v. *Pringle*, 268 U. S. 315, in which, under the same bankruptcy laws, in effect at the time of the *Sloan* decision, the United States itself was denied a priority other than as a taxing power. This very point was referred to in the separate opinion of Chief Justice Taft in the *Sloan Shipyards* case (at p. 574).

to such corporation's right to sue and be sued, the United States may sue in its own name, under Section 24 (1) of the Judicial Code (28 U. S. C. 41), upon claims arising out of transactions with such corporation. *Erickson* v. *United States,* 264 U. S. 246 (Spruce Corporation); *United States* v. *Skinner & Eddy Corp.,* 35 F. 2d 889, 892 (C. C. A. 9), certiorari denied, 281 U. S. 777 (Fleet Corporation); *Russell Wheel & Foundry Co.* v. *United States,* 31 F. 2d 826, 828 (C. C. A. 6) (same); *United States* v. *Czarnikow-Rionda Co.,* 40 F. 2d 214, 215–216 (C. C. A. 2) (same); *United States* v. *Arthur,* 23 F. Supp. 537 (S. D. N. Y.) (R. F. C.); *United States* v. *Freeman,* 21 F. Supp. 593 (D. Mass.) (R. F. C.); *R. F. C.* v. *Graydon,* 16 F. Supp. 765 (E. D. S. C.) (R. F. C.); *R. F. C.* v. *Krauss,* 12 F. Supp. 44 (D. N. J.) (R. F. C.); *United States* v. *Stein,* 48 F. 2d 626 (N. D. Ohio) (U. S. Housing Corporation). Such decisions are in accord with the long established principle that the United States may sue in its own name on obligations in which it is the real party in interest, without regard to the form of the transaction or the character of the agent through which the claim arose. *Dugan* v. *United States,* 3 Wheat. 172, 180; *United States* v. *Buford,* 3 Pet. 12, 29; cf. *Benton* v. *Woolsey,* 12 Pet. 27, 31. For like reasons, the Court of Claims has entertained suits *against* the United States upon claims arising from transactions with a Govern-

ment corporation. *John Morrell & Co.* v. *United States*, 89 C. Cls. 167 (Federal Surplus Commodities Corporation); *Crooks Terminal Warehouses, Inc.* v. *United States*, 92 C. Cls. 401 (same).

These cases find a strong basis in policy, at least as applied to the R. F. C., since the United States has assumed its ultimate liabilities (R. F. C. Act, Sec. 9). This, we submit, is proof that the power of the corporation to sue was not intended by the Congress to deprive the United States of its traditional right to protect its substantial interests by bringing suit in its own name.

Since a counterclaim is in effect a suit by the defendant against the plaintiff which may result, as it did here, in an affirmative judgment for the counterclaimant (cf. *Nassau Smelting Works* v. *United States*, 266 U. S. 101, 106; *Reeside* v. *Walker*, 11 How. 271), there is no basis in logic or in reason for denying to the United States the right to assert in a counterclaim a demand which it could assert in an independent suit. If one of the announced legislative purposes of Section 145 (2) is to be achieved—the elimination of multiplicity of actions—it is clear that the counterclaim jurisdiction created in the Court of Claims must be at least as broad as that vested in United States district courts over suits brought by the Government. Thus, the Court of Claims was correct in following its previous decisions holding that the

Government has the right to recover on counterclaims originating in the transactions of its corporate agencies. *Crane* v. *United States*, 73 C. Cls. 677, 684, 689, certiorari denied, 287 U. S. 601; *Ship Construction Company, Inc.* v. *United States*, 91 C. Cls. 419, 464, certiorari denied, 312 U. S. 699.

There is nothing in the organic legislation creating the R. F. C., or in the amendments thereto, to indicate that it is not as much a part of the "Government of the United States" as any regular department or noncorporate establishment. On the contrary, the corporation's administrative methods and the assumption by the United States of its ultimate liabilities are facts which plainly show its inherently governmental nature. In any event, we submit that here, as in an earlier case where the governmental character of the funds of a Government corporation was also relevant, the "motives which lead Government to clothe its activities in corporate form are entirely unrelated to the problem." Cf. *Inland Waterways Corp.* v. *Young*, 309 U. S. 517, 523. This is particularly true here inasmuch as the R. F. C. has in effect requested its principal, the United States, to assert by way of counterclaim the demand here in question. At the same time, the fiscal separateness of R. F. C. is fully preserved, since the check for the tax refund was paid to R. F. C. (R. 13–14) and the judgment rendered for the United States in this suit, if col-

lected, would likewise be paid to R. F. C. (Appendix B, *infra*, p. 49).

B. The following survey of the corporation's functions, powers, etc., shows the close relationship of the R. F. C. to the Government of the United States.

1. The management and direction of the R. F. C. are entrusted to a board of directors appointed, as are other officers of the United States, by the President by and with the advice and consent of the Senate.[11] Since 1939, the R. F. C. has functioned under the general supervision of a noncorporate government agency. Pursuant to the Reorganization Act of 1939,[12] R. F. C. was placed by the President under the Federal Loan Agency, which supervises the administration and is responsible for coordinating the functions and activities of the several Government lending agencies.[13] In February 1942, the President ordered all functions, powers, and duties of the Federal Loan Agency relating to R. F. C. to be

[11] Reconstruction Finance Corporation Act, as amended (47 Stat. 5; 15 U. S. C. § 601 *et seq.*), section 3. See also 75 Cong. Rec. 1916. The original board of R. F. C. consisted of the Secretary of the Treasury, the Governor of the Federal Reserve Board, the Farm Loan Commissioner, and four other directors. It now consists of five members, no more than three of whom may be members of the same political party and no more than one of whom may be appointed from any one Federal Reserve district.

[12] 53 Stat. 561.

[13] President's Reorganization Plan No. I of April 25, 1939, 53 Stat. 1423.

transferred to the Department of Commerce and to be administered under the direction and supervision of the Secretary of Commerce.[14] By the Act of February 24, 1945, Pub. Law No. 4, 79th Cong., 1st Sess., the Federal Loan Agency was made an independent establishment and all powers of the Department of Commerce relating to the R. F. C. were transferred to the Federal Loan Agency. The officers and employees of R. F. C. are selected, employed and compensated in the manner applied by Congress to the employment and compensation of officers and employees of many noncorporate agencies of the Government.[15]

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[14] Executive Order No. 9071 of February 24, 1942.

[15] Legislative Appropriation Act, fiscal year 1933, section 107 (a) (4) (47 Stat. 402); Act of January 31, 1935, section 1 (49 Stat. 1); Independent Offices Appropriation Act, 1939, section 5 (52 Stat. 435); Independent Offices Appropriation Act, 1940, section 5 (53 Stat. 550); Independent Offices Appropriation Act, 1941, section 4 (54 Stat. 141); Independent Offices Appropriation Act, 1942, section 4 (55 Stat. 123); Fifth Supplemental National Defense Appropriation Act, 1942, section 403 (56 Stat. 132); Independent Offices Appropriation Act, 1943, section 3 (56 Stat. 422); and Independent Offices Appropriation Act, 1944, section 205 (57 Staf. 196), relate to the compensation and the citizenship of R. F. C. officers and employees. The Act of August 2, 1939, section 9A (1) (53 Stat. 1148); First Deficiency Appropriation Act, 1941 (55 Stat. 74–75); Independent Offices Appropriation Act, 1943, section 4 (56 Stat. 422); and Departments of State, Justice and Commerce Appropriation Act, 1944, section 403 (57 Stat. 301), prohibit the payment of salary or wages by R. F. C. to any person who advocates, or who is a member of an organization that advocates, the overthrow of the Government of the United States by force of violence. R. F. C.

2. The funds of the R. F. C. come from the Treasury of the United States and are destined to return thereto. R. F. C.'s capital stock of $500,000,000 was subscribed exclusively by the United States, its sole stockholder.[16] The obligations of R. F. C., which are fully and unconditionally guaranteed by the United States, are issued and marketed through the Secretary of the Treasury and are treated as public debt transactions.[17] R. F. C. is authorized to act as a depositary of public moneys and as financial agent of the United States and, in turn, is authorized to deposit its moneys with the Treasurer of the United States.[18] Upon its liquidation, either by itself during the first 15 years, or thereafter by the Secretary of the Treasury, any surplus of R. F. C. is to be carried into the miscellaneous receipts of the Treasury of the United States.[19]

employees have received overtime compensation pursuant to the Joint Resolution of December 22, 1942 (56 Stat. 1608) and now receive overtime compensation under the Act of May 7, 1943 (57 Stat. 75). The Act of November 26, 1940 (54 Stat. 1211) and the Executive Order No. 8743 of April 23, 1941, relating to extension of the classified executive Civil Service of the United States, are applicable to R. F. C. employees and the Civil Service Retirement Act, as amended (46 Stat. 468) is extended to such employees under the Act of January 24, 1942 (56 Stat. 13).

[16] R. F. C. Act, as amended, *supra*, section 2.

[17] *Id.*, section 9.

[18] *Id.*, sections 7, 12.

[19] *Id.*, section 4, 13.

Moreover, administrative expenses of R. F. C. are paid from annual appropriations made by Congress.[20] The franking privilege has been granted to R. F. C. and it is authorized to avail itself of the use of information, services, facilities, offices, and employees of any board, commission, independent establishment, or executive department of the Government, with the latter's consent.[21]

3. R. F. C. was formed to carry out the fiscal powers of the United States. Congress has authorized the corporation to make loans and other-

[20] First Deficiency Appropriation Act, fiscal year 1936 (49 Stat. 1647–1648); Independent Offices Appropriation Act, 1938 (50 Stat. 350); Independent Offices Appropriation Act, 1939 (52 Stat. 434); Independent Offices Appropriation Act, 1940 (53 Stat. 549); Urgent Deficiency and Supplemental Appropriation Act, fiscal years 1939 and 1940 (53 Stat. 984); Independent Offices Appropriation Act, 1941 (54 Stat. 123); First Deficiency Appropriation Act, 1941 (55 Stat. 63); Independent Offices Appropriation Act, 1942 (55 Stat. 102–103); Independent Offices Appropriation Act, 1943 (56 Stat. 403); and Departments of State, Justice, and Commerce Appropriation Act, 1944 (57 Stat. 292).

Section 7 of the First Deficiency Appropriation Act, fiscal year 1936, *supra*, prohibited R. F. C. from incurring, after June 30, 1937, any obligations for administrative expenses, except pursuant to an annual appropriation specifically therefor. But even prior to this Act, R. F. C. was required, in conformance with the President's policy expressed in Executive Orders Nos. 7126 of August 5, 1935, and 7150 of August 19, 1935, to submit fiscal year estimates of administrative expenses to the Bureau of the Budget in advance of incurring obligations therefor.

[21] R. F. C. Act, as amended, *supra*, section 4.

wise give financial aid in a wide variety of situations, "to aid in financing agriculture, commerce, and industry, including facilitating the exportation of agricultural and other products".[22] R. F. C. may make loans to railroads;[23] to "any business enterprise when capital or credit, at prevailing rates for the character of loan applied for, is not otherwise available", "for the purpose of maintaining and promoting the economic stability of the country or encouraging the employment of labor";[24] to States for the relief of destitution[25] or to aid in financing self-liquidating projects;[26] to aid in the relief of disasters;[27] "to finance sales of agricultural surpluses in foreign countries";[28] and "to finance the carrying and orderly marketing of agricultural commodities and livestock produced in the United States."[29]

In addition to its loan-making powers, which the President may suspend from time to time,[30]

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[22] R. F. C. Act, as amended, *supra*, section 5.

[23] *Id.*, section 5.

[24] *Id.*, section 5d.

[25] Emergency Relief and Construction Act of 1932, section 1 (47 Stat. 709).

[26] *Id.*, section 201 (a); see also R. F. C. Act, as amended, *supra*, section 5d.

[27] *Id.*, section 201 (a) (6), as amended by 48 Stat. 20.

[28] *Id.*, section 201 (c).

[29] *Id.*, section 201 (d).

[30] Under the Act of January 26, 1937, as amended, if "the President finds * * * that credit for any class of borrowers to which the Corporation is authorized to lend is sufficiently available from private sources to meet legitimate

R. F. C. has been directed by Congress to allocate and transfer various amounts to other branches of the Government, and in this respect, acts in a capacity similar to that of the Treasury of the United States.[31] R. F. C. is required to make reports of its operations to Congress and the President.[32]

The above analysis leaves no doubt that the R. F. C. is as fully a part of "the Government of the United States" as any of the regular departments.

III

The Government's Accounting Procedures Do Not Limit the Scope of the Counterclaim Provision

Petitioner argues that only those "demands" may be made the subject of a counterclaim under Section 145 (1) of the Judicial Code which are settled and adjusted in the General Accounting Office under the Budget and Accounting Act of 1921; that the powers of that Office do not extend to claims arising out of R. F. C. functions; and therefore that such claims may not be asserted

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demands upon fair terms and rates," he "may authorize the directors to suspend the exercise by the Corporation of any such lending authority from such time or times as he may deem advisable."

[31] R. F. C. Act, as amended, *supra*, sec. 2, and Act of February 4, 1933 (47 Stat. 795).

[32] R. F. C. Act, as amended, *supra*, sec. 15; Emergency Relief and Construction Act of 1932, sec. 201 (b).

as a counterclaim or set-off under Section 145 (1) (Pet. Br. 9–15). This argument does not bear analysis, and, in any event, does not support the conclusion.

A. The Budget and Accounting Act of 1921 (c. 18, 42 Stat. 20, 31 U. S. C. 1 *et seq.*) created "an establishment of the Government to be known as the General Accounting Office, which shall be independent of the executive departments and under the control and direction of the Comptroller General of the United States." It abolished the offices of Comptroller of the Treasury and Assistant Comptroller of the Treasury and transferred their functions, employees and facilities to the General Accounting Office (*Id.* secs. 301, 304; 31 U. S. C. 41, 44).

It also vested in that Office a number of functions over the accounts of "the departments and establishments." For example, the Comptroller General is authorized to prescribe "the forms, systems, and procedure for administrative appropriation and fund accounting in the several departments and establishments" (*Id.* sec. 309; 31 U. S. C. 49); "All departments and establishments" must furnish to the Comptroller General such information as he may require regarding their "financial transactions", and he may examine their books and records (*Id.* sec. 313; 31 U. S. C. 54); the General Accounting Office is authorized to "receive and examine all accounts"

of salaries and expenses of enumerated departments, bureaus and establishments of the Government (*Id.* sec. 304; 31 U. S. C. 74); and the head of any executive department or other establishment may apply to the General Accounting Office for a decision upon any question involving a payment to be made, and such decision shall govern the agency in passing upon the account containing the disbursement (*Id.* sec. 304; 31 U. S. C. 74). Other provisions of the 1921 Act prescribe functions relating to specified departments, agencies or bureaus.

In support of its contention, petitioner cites Section 2 of the 1921 Act (42 Stat. 20), which provides:

> When used in this Act—The terms "department and establishment" and "department or establishment" mean any executive department, independent commission, board, bureau, office, agency, or other establishment of the Government, including the municipal government of the District of Columbia, but do not include the Legislative Branch of the Government or the Supreme Court of the United States; * * *.[33]

This provision contains no mention of Government corporations, and petitioner contends that R. F. C. is therefore excluded from all the func-

[33] Petitioner erroneously states in its brief (p. 13) that this definition defines "the Government of the United States" as well as the departments and establishments.

tions and powers of the General Accounting Office. The contention contains several fallacies:

1. The provision in the 1921 Act pertinent here does not refer to the "departments and establishments" but uses much broader language. Section 305 of the 1921 Act amended Section 236 of the Revised Statutes to read as follows:

> All claims and demands whatever by the Government of the United States or against it, and all accounts whatever in which the Government of the United States is concerned, either as debtor or creditor, shall be settled and adjusted in the General Accounting Office.[34]

This section, it will be observed, makes no mention whatever of "departments or establishments", but applies generally to demands of "the Government of the United States." Consequently, there is nothing to prevent the application of this provision to the finally audited claims of a Government corporation such as R. F. C.

2. The accounts of R. F. C. are audited, adjusted and settled by its own officers and agents.[35]

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[34] Rev. Stat. § 236 was in turn derived from Section 2 of the Act of March 3, 1817, (c. 45, 3 Stat. 366), which was identical with the 1921 version except that the power of settlement and adjustment was vested in the Treasury Department.

[35] This is a result of the powers granted to the board of directors "to determine and prescribe the manner in which its obligation shall be incurred and its expenses allowed and paid", and to prescribe "regulations governing the manner in which its general business may be conducted and the

But the R. F. C., in carrying out its functions, is specifically authorized to "avail itself of the use of information, services, facilities, officers, and employees" of any "independent establishment * * * of the Government" with the latter's consent (R. F. C. Act, sec. 4), and the Budget and Accounting Act of 1921, *supra*, (sec. 301), has expressly characterized the General Accounting Office as an "establishment of the Government."

Hence, under the very terms of these statutes, R. F. C. is authorized to invoke the facilities of the General Accounting Office as a means of collecting its demands. Since the General Accounting Office is the gateway through which the great body of claims against the Government must pass before payment is made, principles of sound administration justify, if they do not require, all branches of the Government to utilize the facilities of that Office in arresting public funds about to be paid to a debtor of any Government agency, in order that the financial interests of the United States may be adequately protected. The broad powers of the G. A. O. to settle and adjust "all claims and demands whatever by the Government of the United States, or against it, and all accounts whatever in which the Government of

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powers granted to it by law may be exercised and enjoyed" (Sec. 4, 15 U. S. C. 604). However, since the Act of February 24, 1945 (Pub. Law No. 4, 79th Cong., 1st sess.), the Comptroller General is authorized to make an annual audit of "the financial transactions of all Government corporations."

the United States is concerned", are clearly adequate to include the steps taken by the Comptroller General and the R. F. C. in the instant case.

3. The uniform practice in the General Accounting Office has been in accord with this construction of its powers under the Budget and Accounting Act of 1921. As is shown by a letter from the Acting Comptroller General (Appendix, *infra*, pp. 47–50), the General Accounting Office has had a system for over 20 years whereby it records debts due to any branch of the Government, and asserts them by way of set-off against any debtor who has an allowable claim against the Government. At the request of the General Accounting Office, embodied in a General Order issued April 4, 1934 (13 Comp. Gen. 491), the R. F. C. and several other Government corporations have from time to time voluntarily reported to the General Accounting Office certain of their otherwise uncollectible debts, in order to have the General Accounting Office apply thereto public funds that would otherwise be paid to the debtor on other claims (see Appendix, *infra*, p. 49).

The demand here involved falls within the latter category and was reported by R. F. C. to the Comptroller General. Hence, when petitioner presented its tax refund claim to the Comptroller General for allowance, the latter was confronted with a record—furnished by the R. F. C. precisely to meet that

contingency—that a greater sum was due from petitioner to another arm of the Government. In those circumstances, the Comptroller General would have been remiss in his duties had he permitted the payment to petitioner of $3,000 from the public treasury, forcing R. F. C. to find other means of collecting its claim for $7,000—the loss of which would fall upon the public treasury. At the same time the fiscal separateness of R. F. C. was preserved, since the check for the tax refund was issued to R. F. C.

The situation here is clearly distinguishable from that presented in *Skinner & Eddy Corp.* v. *McCarl*, 275 U. S. 1, strongly relied upon by petitioner. That case did not involve the counterclaim provision, but rather Rev. Stat. § 951 (28 U. S. C. 774), pursuant to which a defendant in a suit brought by the United States is permitted to claim a credit if his claim has been presented to and disallowed by the Treasury Department (after 1921, the General Accounting Office). In that case this Court held that a contractor with the U. S. Shipping Board Emergency Fleet Corporation was not entitled to a writ of mandamus to compel the Comptroller General to consider and disallow alleged claims by the contractor against the Corporation, for use as credits in threatened suits by the United States on Fleet Corporation's contracts. Mr. Justice Brandeis, speaking for this Court, pointed out that the financial transactions of the Corporation "at no

time * * * passed through the hands of the general accounting officers of the Government", and held that substantial compliance with the provisions of Rev. Stat. § 951 would be had if the claims were presented to and disallowed by the accounting officers of either the Shipping Board or the Corporation (275 U. S. at 7, 12).

Here the Government corporation's claim against petitioner was fully audited and adjusted by the R. F. C., and the General Accounting Office was not requested to pass upon the merits of the claim. The latter agency was merely advised that the R. F. C. had an uncontroverted, liquidated claim against the petitioner, and was requested to apply that claim against any credits standing in petitioner's favor. It so happened that the petitioner had an allowed tax refund of about $3,000 standing to its credit on the books of the General Accounting Office, and that Office applied it to the R. F. C. claim. Thus, the Comptroller General was not called upon to exercise his discretion in the matter of passing on the merits of the R. F. C. claim as he was in connection with the corporate agency claim involved in the case of *Skinner & Eddy Corp.* v. *McCarl, supra.* Moreover, in the latter case, this Court stressed and relied upon the consistent administrative practice of the General Accounting Office and the Government corporation, under which the latter's claims were audited and settled by its own accountants, and not by the General Accounting

Office. Here, the consistent administrative practice has been for the General Accounting Office to *collect* by set-off the claims of Government corporations reported to it for that purpose. The decision in that case does not, therefore, control the case at bar.

Indeed, wholly apart from the counterclaim statute, the Comptroller General would have acted properly in refusing to pay petitioner its claim so long as it remained indebted to a federal agency. Without statute, the United States has the power and right to effect accounting set-offs and adjustments in connection with claims presented to it for payment, "the exercise of the common right, which belongs to every creditor, to apply the unappropriated moneys of his debtor, in his hands, in extinguishment of the debts due to him." *Gratiot v. United States*, 15 Pet. 336, 370; *McKnight v. United States*, 98 U. S. 179, 186. It is the plain duty, therefore, of all Government officers to do the same in order to protect the interests of the United States. To hold that any Government officer charged with the responsibility of certifying claims for payment, must certify for payment a claim against the United States when he has actual knowledge that the claimant owes the Government on some other transaction, would preclude Government officers from exercising that degree of prudence expected and demanded of persons engaged in private business. The court be-

low was clearly correct, therefore, in stating that it was the duty of someone, on behalf of the Government, to see that this set-off was made.

B. But it is in fact immaterial whether or not the General Accounting Office had power to receive from the R. F. C. notification of its demand against petitioner and to assert it by way of set-off against petitioner's claim against the United States. The provisions of Section 145 (2) of the Judicial Code impose a duty upon the Court of Claims to recognize and enforce a counter-demand of the United States whenever the evidence before that court shows such a demand to exist; and it is immaterial whether or not the attorneys for the United States file a formal plea of set-off or counterclaim. *United States* v. *Burns*, 12 Wall. 246, 254; *Clark* v. *United States*, 95 U. S. 539, 543; *United States* v. *Carr*, 132 U. S. 644, 650; *Wisconsin Central R. R. Co.* v. *United States*, 164 U. S. 190, 212.

Viewed in another aspect, the counterclaim provision constitutes a condition to the privilege of bringing suit against the sovereign (*McElrath* v. *United States*, 102 U. S. 426, 440), and it would have been the duty of the Court of Claims to enforce the condition merely upon the allegations of petitioner's own complaint, which themselves disclosed petitioner's indebtedness to the R. F. C. (R. 1–3). The channel by which the information

concerning the counter-demand was brought to the attention of the Court of Claims is wholly immaterial. Accounting statutes, which allocate duties and responsibilities of safeguarding against improper expenditure of public moneys, belong "to an entirely different class" from those relating to the defense of suits against the Government in the Court of Claims. Cf. *United States* v. *Jones*, 119 U. S. 477. Such statutes are clearly not *in pari materia* with Section 145 (2). *Taggart* v. *United States*, 17 C. Cls. 322. The very purpose of resort to the courts in a situation like that at bar is to go behind accounting action unfavorable to the plaintiff, and to obtain a judicial ascertainment of the rights of the parties. *United States* v. *Burchard*, 125 U. S. 176; *Steele* v. *United States*, 113 U. S. 128; *Cosgrove* v. *United States*, 31 C. Cls. 332. Such judicial determination is the only final adjudication of the contest. *Richmond F. & P. Ry. Co.* v. *McCarl*, 62 F. 2d 203 (App. D. C.), certiorari denied, 288 U. S. 615; *Skinner & Eddy Corporation* v. *McCarl*, 275 U. S. 1, 5, fn. 2.

It is clear that the General Accounting Office did not exceed its authority in setting off the R. F. C. claim, and that the Court of Claims acted within its jurisdiction in adjudicating the counterclaim.

CONCLUSION

We submit that the judgment should be affirmed.

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DECEMBER 1945.

APPENDIX A

The following are the texts of statutes referred to in the Government's brief.

Section 145 of the Judicial Code, 28 U. S. C. § 250, provides:

> The Court of Claims shall have jurisdiction to hear and determine the following matters:
>
> (1) *Claims against United States.*
>
> First. All claims (except for pensions) founded upon the Constitution of the United States or any law of Congress, upon any regulation of an executive department, upon any contract, express or implied, with the Government of the United States, or for damages, liquidated or unliquidated, in cases not sounding in tort, in respect of which claims the party would be entitled to redress against the United States either in a court of law, equity, or admiralty if the United States were suable: *Provided, however,* That nothing in this section shall be construed as giving to the said court jurisdiction to hear and determine claims growing out of the late civil war, and commonly known as "war claims", or to hear and determine other claims which, prior to March 3, 1887, had been rejected or reported on adversely by any court, department, or commission authorized to hear and determine the same.
>
> (2) *Set-offs.*
>
> Second. All set-offs, counterclaims, claims for damages, whether liquidated or unliquidated, or other demands whatsoever

on the part of the Government of the United States against any claimant against the Government in said court: *Provided*, That no suit against the Government of the United States, brought by any officer of the United States to recover fees for services alleged to have been performed for the United States, shall be allowed under this chapter until an account for said fees shall have been rendered and finally acted upon as required by law, unless the General Accounting Office fails to act finally thereon within six months after the account is received in said office.

Section 146 of the Judicial Code, 28 U. S. C. § 252 provides:

Judgments for set-off or counterclaims.—Upon the trial of any cause in which any set-off, counterclaim, claim for damages, or other demand is set up on the part of the Government against any person making claim against the Government in said court, the court shall hear and determine such claim or demand both for and against the Government and claimant; and if upon the whole case it finds that the claimant is indebted to the Government it shall render judgment to that effect, and such judgment shall be final, with the right of appeal, as in other cases provided for by law. Any transcript of such judgment, filed in the clerk's office of any district court, shall be entered upon the records thereof, and shall thereby become and be a judgment of such court and be enforced as other judgments in such court are enforced.

R. S. 951, as amended, 28 U. S. C. 774, provides:

Suits by United States against individuals; credits.—In suits brought by the

United States against individuals, no claim for a credit shall be admitted, upon trial, except such as appear to have been presented to the General Accounting Office for its examination, and to have been by it disallowed, in whole or in part, unless it is proved to the satisfaction of the court that the defendant is, at the time of the trial, in possession of vouchers not before in his power to procure, and that he was prevented from exhibiting a claim for such credit at the General Accounting Office by absence from the United States or by some unavoidable accident.

The Act of March 3, 1875, c. 149, 18 Stat. 481, as amended, 31 U. S. C. 227, provides:

Offsets against judgments against United States.—When any final judgment recovered against the United States duly allowed by legal authority shall be presented to the Comptroller General of the United States for payment, and the plaintiff therein shall be indebted to the United States in any manner, whether as principal or surety, it shall be the duty of the Comptroller General of the United States to withhold payment of an amount of such judgment, equal to the debt thus due to the United States; and if such plaintiff assents to such set-off, and discharges his judgment or an amount thereof equal to said debt, the Comptroller General of the United States shall execute a discharge of the debt due from the plaintiff to the United States. But if such plaintiff denies his indebtedness to the United States, or refuses to consent to the set-off, then the Comptroller General of the United States shall withhold payment of such further amount of such judgment, as in his opinion will be sufficient to cover all legal charges and costs in prose-

cuting the debt of the United States to final judgment. And if such debt is not already in suit, it shall be the duty of the Comptroller General of the United States to cause legal proceedings to be immediately commenced to enforce the same, and to cause the same to be prosecuted to final judgment with all reasonable dispatch. And if in such action judgment shall be rendered against the United States, or the amount recovered for debt and costs shall be less than the amount so withheld as before provided, the balance shall then be paid over to such plaintiff by such Comptroller General of the United States with 6 per centum interest thereon for the time it has been withheld from the plaintiff.

The following provisions of the Budget and Accounting Act of 1921 (Act of June 10, 1921, c. 18, § 2, 42 Stat. 20):

SEC. 2. When used in this Act—

The terms "department and establishment" and "department or establishment" mean any executive department, independent commission, board, bureau, office, agency, or other establishment of the Government, including the municipal government of the District of Columbia, but do not include the Legislative Branch of the Government or the Supreme Court of the United States;

The term "the Budget" means the Budget required by section 201 to be transmitted to Congress;

The term "Bureau" means the Bureau of the Budget;

The term "Director" means the Director of the Bureau of the Budget; and

The term "Assistant Director" means

the Assistant Director of the Bureau of the Budget.

* * * * *

SEC. 301. There is created an establishment of the Government to be known as the General Accounting Office, which shall be independent of the executive departments and under the control and direction of the Comptroller General of the United States. The offices of Comptroller of the Treasury and Assistant Comptroller of the Treasury are abolished, to take effect July 1, 1921. All other officers and employees of the office of the Comptroller of the Treasury shall become officers and employees in the General Accounting Office at their grades and salaries on July 1, 1921, and all books, records, documents, papers, furniture, office equipment and other property of the office of the Comptroller of the Treasury shall become the property of the General Accounting Office. The Comptroller General is authorized to adopt a seal for the General Accounting Office.

* * * * *

SEC. 304. All powers and duties now conferred or imposed by law upon the Comptroller of the Treasury or the six auditors of the Treasury Department, and the duties of the Division of Bookkeeping and Warrants of the Office of the Secretary of the Treasury relating to keeping the personal ledger accounts of disbursing and collecting officers, shall, so far as not inconsistent with this Act, be vested in and imposed upon the General Accounting Office and be exercised without direction from any other officer. The balances certified by the Comptroller General shall be final and conclusive upon the executive branch of the

Government. The revision by the Comptroller General of settlements made by the six auditors shall be discontinued, except as to settlements made before July 1, 1921. * * *

States.

* * * * *

SEC. 313. All departments and establishments shall furnish to the Comptroller General such information regarding the powers, duties, activities, organization, financial transactions, and methods of business of their respective offices as he may from time to time require of them; and the Comptroller General, or any of his assistants or employees, when duly authorized by him, shall, for the purpose of securing such information, have access to and the right to examine any books, documents, papers, or records of any such department or establishment. The authority contained in this section shall not be applicable to expenditures made under the provisions of section 291 of the Revised Statutes.

Section 4 of the Reconstruction Finance Corporation Act, Act of January 22, 1932, c. 8, § 4, 47 Stat. 6, as amended, 15 U. S. C. 604, provides in pertinent part:

Period of succession; powers; use of mails and other facilities of Government.—The corporation shall have succession for a period of fifteen years from the date of the enactment hereof, unless it is sooner dissolved by an Act of Congress. It [the R. F. C.] shall have power to * * * sue and be sued, to complain and to defend, in any court of competent jurisdiction, State or Federal; * * * to prescribe, amend, and repeal, by its board of directors, bylaws, rules, and regulations governing the manner in which its general business may be conducted and the powers granted to it by law may be exercised and enjoyed * * * The board of directors of the corporation shall determine and prescribe the manner in which its obligations shall be incurred and its expenses allowed and paid. * * * The corporation, with the consent of any board, commission, independent establishment, or executive department of the Government, including any field service thereof, may avail itself of the use of information, services, facilities, officers, and employees thereof in carrying out the provisions of the sections hereinbefore enumerated.

APPENDIX B

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, November 30, 1945.

B–35182

The Honorable The ATTORNEY GENERAL.

MY DEAR MR. CLARK: This is in response to the informal inquiry of November 27, 1945, by your Department with regard to the practice and procedure of the General Accounting Office in examining claims against the United States, where a cross-claim is found to be involved.

In furtherance of the duties imposed upon the General Accounting Office by 31 U. S. C. 71, 72, and 93 and in view of the enactment of relief legislation relating to accountable officers or the inadequacy of their surety bonds to insure recovery, in proceedings under 31 U. S. C. 505, of large overpayments incident to Government transactions during the First World War for which credit had been disallowed or suspended in the official accounts of accountable officers, the Department of Justice (file 208677) suggested to the Comptroller General that "recoveries very greatly in excess of the cost might be realized by creating a small additional force" in the General Accounting Office "charged with the duty of collecting, as far as possible, all such suspended or disallowed items from the ultimate beneficiaries." In letter of October 19, 1921, the Attorney General explained that the suggestion made "was intended to cover

only the accounts of disbursing officers of the Army during the World War, proposing, * * * 'an activity separate from that of ordinary accounting procedure.' "

For purposes of convenience and practicability the special procedure thus suggested by the Attorney General was consolidated with the ordinary accounting procedure for collection of debts certified due by the General Accounting Office as outlined in the Annual Report of the General Accounting Office, 1923, House Document No. 101, 68th Congress, 1st Session, page 6; and, by Circular No. 10 of February 7, 1923, the Comptroller General established a collection unit whose functions included the keeping of a record of all debts owed to the United States incident to any transaction of any of its agents or agencies. By General Regulation No. 37 of July 7, 1924, 4 Comp. Gen. 1083, the collection unit was transferred to the Claims Division of the General Accounting Office so that its work was coordinated with the settlement and adjustment of claims by or against the United States or in which the Government is concerned either as debtor or creditor. Since this system was set up, whenever any claim is presented to the General Accounting Office and allowed, and it is found that the claimant is indebted to the United States in any amount, the certificate of settlement of the General Accounting Office directs that the amount due and allowed to the claimant be applied, to the extent required, to the payment of the debt due to the United States or any of its agencies, as shown by the debt records. If the amount due to the United States or its agencies is less than the amount due to the claimant, the

certificate of settlement directs the issuance of two checks, one to the agency or official having custody or jurisdiction over the account to be credited with the amount of the debt, and the balance to the claimant. Such directions are uniformly observed by the Treasurer of the United States. This procedure was followed as to the claims involved in *Cherry Cotton Mills, Inc.* v. *The United States*, C. Cls. No. 45885, decided by the Court of Claims March 5, 1945, judgment entered April 2, 1945.

By General Order 50, Supplement 1, issued by the General Accounting Office on August 4, 1934, 13 Comp. Gen. 491, all Government departments and agencies are requested and authorized to transmit to the General Accounting Office reports of any debts due to them or to the United States. While this includes only those Government corporations organized after 1933, Government corporations organized before that date, such as the Reconstruction Finance Corporation, from time to time report debts due to them. Such debts are treated by the General Accounting Office, for purposes of applying amounts due to claimants, in the same way as debts arising from transactions with any of the departments or other agencies of the Government.

If a judgment is recovered by the United States on a claim of a Government corporation having custody and control of its accounts, as is true in the *Cherry Cotton Mills* case, this office would take the position that the payment of that judgment should properly be made to the Government corporation involved, here the Reconstruction Finance Corporation. In such cases, this office would direct that the check in payment of the judgment be issued to

the Government corporation for deposit to its account.

Respectfully,

(Signed) FRANK L. YATES,
Acting Comptroller General
of the United States.

RECONSTRUCTION FINANCE CORPORATION,
Washington, November 30, 1945.

MR. JOHN F. SONNETT,
Assistant Attorney General,
Room 3141, Department of Justice,
Washington, D. C.

DEAR MR. SONNETT: You have asked that RFC advise you whether in the past it has requested other departments of the Government to withhold the payment of sums due certain creditors who were indebted to RFC in order that the set-off might be effected.

The procedure we have followed during the past several years has been substantially as follows: RFC has notified the department or agency of the Government which was indebted to the person, firm, or corporation indebted to RFC and has requested it to withhold payment to such person, firm, or corporation. At the same time RFC requests the General Accounting Office to withhold payment to the debtor on account of his debt to such department or agency of the Government, and instead to make direct settlement with the RFC. This action is taken most commonly in cases where the debt is considered otherwise uncollectible. This general practice is illustrated by the action taken

in connection with the claim of the RFC involved in *Cherry Cotton Mills, Inc.*, v. *United States*, 59 Fed. Supp. 122. Usually, whole or partial liquidation of the RFC's claim has been thus effected.

Similarly, other agencies from time to time have requested RFC to withhold sums due their debtors.

Very truly yours,

JOHN D. GOODLOE,
General Counsel.

U. S. GOVERNMENT PRINTING OFFICE: 1948

SUPREME COURT OF THE UNITED STATES.

No. 187.—October Term, 1945.

Cherry Cotton Mills, Inc., Petitioner, *vs.* The United States.	Petition for Writ of Certiorari to the Court of Claims.

[March 25, 1946.]

Mr. Justice Black delivered the opinion of the Court.

In 1942 the Government owed the petitioner a $3104.87 refund of processing and floor taxes paid by the petitioner under the Agricultural Adjustment Act. The petitioner owed the Reconstruction Finance Corporation $5963.51, balance on a note for borrowed money. The General Accounting Office directed the Treasury not to pay the tax refund to the petitioner, but to issue a check for the refund payable to the R. F. C. "to partially liquidate" petitioner's indebtedness to that governmental agency. As authorized by 28 U. S. C. 250(1), the petitioner then brought suit against the Government for the tax refund in the Court of Claims. The Government filed a counterclaim for the $5963.51, asserting the right to do so under 28 U. S. C. 250(2), which gives the Court of Claims jurisdiction to hear and determine "All set-offs, counterclaims, . . . or other demands whatsoever on the part of the Government of the United States against any claimant against the Government in said Court." The petitioner challenged the jurisdiction of the Court of Claims to hear and determine the counterclaim on these two grounds: (1) the Comptroller exceeded his authority in directing the Treasury to pay the tax refund to the R. F. C. instead of to the petitioner; (2) the R. F. C. should be treated in the same way as a privately owned corporation and when so treated the petitioner's admittedly valid indebtedness to R. F. C. is not a claim "on the part of the Government" entitling it to set up a counterclaim under 28 U. S. C. 250(2). The Court of Claims rejecting both these contentions, rendered judgment for the United States and against the petitioner for the amount it owed the R. F. C. less the amount of the tax refund. We granted certiorari.

Little need be said as to the contention concerning the alleged lack of authority of the General Accounting Office to direct the Treasury not to pay the petitioner, since we agree with the Court of Claims that its jurisdiction to hear and determine counterclaims is in no way dependent upon the preliminary intergovernmental steps which precede court action. For this reason the petitioner's argument based on our decision in *Skinner & Eddy Corporation v. McCarl*, 275 U. S. 1, where we considered the power of the Comptroller General in relation to wholly different legislation, has no bearing on the power of the Court of Claims under 28 U. S. C. 250(2).

Nor do we find any justification for giving to 250(2) the narrow interpretation urged. Its purpose was to permit the government, when sued in the Court of Claims, to have determined in a single suit all questions which involved mutual obligations between the government and a claimant against it. Legislation of this kind has long been favored and encouraged because of a belief that it accomplishes among other things such useful purposes as avoidance of "circuity of action, inconvenience, expense, consumption of the courts' time, and injustice." *Chicago & N. W. Railway v. Lindell*, 281 U. S. 14, 17 and cases cited.

We have no doubt but that the set-off and counterclaim jurisdiction of the Court of Claims was intended to permit the Government to have adjudicated in one suit all controversies between it and those granted permission to sue it, whether the Government's interest had been entrusted to its agencies of one kind or another. Every reason that could have prompted Congress to authorize the Government to plead counterclaims for debts owed to any of its other agencies applies with equal force to debts owed to the R. F. C. Its Directors are appointed by the President and affirmed by the Senate; its activities are all aimed at accomplishing a public purpose; all of its money comes from the Government; its profits if any go to the Government; its losses the Government must bear. That the Congress chose to call it a corporation does not alter its characteristics so as to make it something other than what it actually is, an agency selected by Government to accomplish purely Governmental purposes. *Inland Waterways Corporation v. Young*, 309 U. S. 517, 524. Nor is this Congressionally granted power to plead a counterclaim to be reduced because in other situations and with relation to other statutes, we have applied the doctrine of Governmental immunity or priority rather

rectly.[1] The Government here sought neither immunity nor privilege. Its right to counterclaim rests on different principles, one of which was graphically expressed by the sponsors of the Act of which Section 2(a) 2 is a part: It "is as much the duty of the citizen to pay the Government as it is the duty of the Government to pay the citizen." 50 Cong. Globe 1674, 37th Cong., 2d Sess.

Affirmed.

Mr. Justice Jackson took no part in the consideration or decision of this case.

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[1] Sloan Shipyards et al. v. U. S. Fleet Corporation, 258 U. S. 549; Keifer & Keifer v. Reconstruction Finance Corp., 306 U. S. 381; Reconstruction Finance Corporation v. J. G. Menihan Corp., 312 U. S. 81.